

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|--------------------------------|---|---------------------|
| PAUL POGUE and |) | |
| PAUL POGUE, in his capacity as |) | |
| owner of SURVEYORS' PARK |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION NUMBER |
| |) | |
| v. |) | 2:06-cv-148-MHT |
| |) | |
| TONY CHANDLER, et al., |) | |
| |) | |
| Defendants. |) | |

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S
UNTIMELY REQUEST FOR DISCOVERY OR IN THE ALTERNATIVE,
TO DENY PLAINTIFF'S MOTION

COME NOW the Defendants, by and through counsel, and move this Court to strike or deny the Plaintiff's "Motion for the Court to Compel the Alabama Forestry Commission, and its employee Tony Chandler to Produce Useful Data." As grounds therefore, the Defendants show to this Court the following:

1. On October 30, 2006, the Plaintiff filed a motion with the Court entitled "Plaintiffs Motion for the Court to Compel the Alabama Forestry Commission, and its employee Tony Chandler to Produce Useful Data."

2. This motion appears to be an attempt by the Plaintiff to conduct discovery under Rule 34, Federal Rules of Civil Procedure.

3. The Court's Scheduling Order of July 6, 2006 stated that, "All discovery shall be completed on or before October 30, 2006" (emphasis added). The Plaintiff appears to be attempting to begin discovery on the date which the Court set for discovery to be completed.

4. If the Plaintiff's motion filed on October 30, 2006 is viewed as an attempt to conduct discovery under Rule 34, it was not timely filed. It gave the Defendants no opportunity to respond to the Plaintiff's motion by the date set by the Court for completion of discovery. Since Rule 34 allows 30 days for a party to respond to a request and Rule 6(e) allows an additional three days for the response when the filing party serves a document by mail, any discovery request under Rule 34 would have been untimely after September 27, 2006.

5. The Plaintiff identifies his motion as a "Motion for the Court to Compel..." Since the Plaintiff is seeking to compel discovery, such a motion is wholly improper. Because the Plaintiff has filed no proper discovery requests, the Defendants have no such requests to which they could have responded (or failed to respond). In short, there is nothing for this Court to "compel."

WHEREFORE, the Defendants respectfully request the Court to treat the Plaintiff's "Motion for the Court to Compel..." as a request for discovery under Rule 34 and to strike the request as untimely filed, or to deny the Plaintiff's motion as improper and frivolous.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL
BY

s/Charles T. Conway
Assistant Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2006, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, and that a copy of the same has been sent by First Class Mail to the plaintiff:

Paul Pogue
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s/Charles T. Conway
Assistant Attorney General

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